ties also make a distinction between remoteness and anticipation of loss in cases of negligence and those following the New York rule hold that the case comes within the latter because all ordinary, normal, natural perils are within the scope of that potential anticipation which the law takes as the basis of liability and any person must foresee that delay extends the time during which casualties may overtake the risk. An analogy of this case is also drawn to that where a carrier deviates from the route agreed upon or in contemplation of the parties, in which case the carrier is liable for any damage occurring during such deviation though arising from a cause which would not otherwise have rendered him liable.

In accordance with the view taken in the Pennsylvania and Massachusetts cases is the late case of *Seaboard Air Line Ry.* v. *Mullin* (Fla.), 70 So. 467, in which the facts were identical to those of *Reed* v. *Spaulding* above, and the carrier was accordingly held not liable. This view certainly seems sound on principle notwithstanding the various reasons for holding a carrier liable under such circumstances. The application of the rule of proximate cause may appear to be a strict one but nevertheless it is reasonable. It is true that delay extends the time during which casualties may overtake the risk but even in the legal anticipation of loss in cases of negligence there is not included cases of extraordinary, abnormal and unnatural perils as acts of God. The natural anticipation of loss is the loss of time occasioned by the delay and such other losses as are due directly to such delay. Also the analogy to cases of deviation is unsound because the rule in deviation cases only applies where such deviation amounts to a conversion and certainly there is no conversion by a mere delay.

SITUS OF INTANGIBLE PERSONALTY FOR THE PURPOSES OF TAXATION.—Since intangible personalty has no actual situs in the physical and commonly accepted meaning of the term, its situs for the purpose of taxation is generally its legal situs, namely, the domicil of the owner.[1] Thus, a debt evidenced by a note is taxable at the domicil of the creditor,[2] as are also bonds.[3] Nor does the actual situs of the physical note itself or of the other evidence of the debt affect the taxing power.[4] Since the tax laws of a state can have no extra-territorial application,[5] it is necessary that there be some property within the jurisdiction of the taxing power on which the tax law can operate. Obviously this question causes little difficulty

[1] Worthington et ux. *v.* Sebastian, 25 Ohio St. 1; Kirtland *v.* Hotchkiss, 100 U. S. 491; Union Transit Co. *v.* Kentucky, 199 U. S. 194.

[2] Hunter *v.* Board of Supervisors, 33 Iowa, 1, 11 Am. Rep. 132.

[3] Kirtland *v.* Hotchkiss, *supra.*

[4] Hunter *v.* Board of Supervisors, *supra;* Kirtland *v.* Hotchkiss, *supra; contra,* Wilcox *v.* Ellis, 14 Kan. 588, 19 Am. Rep. 107; State ex rel. Dunnica *v.* County Court 69 Mo. 454.

[5] State Tax on Foreign Held Bonds, 15 Wall. 300.

where both the debtor and creditor are residents of the same state but where they reside in different states, what constitutes taxable property is not so apparent.

Where the tax is by the state of the creditor's domicil the creditor's right to be paid is the property subject to the tax.[6] Taxation in the state of the debtor's domicil seems to have been upheld in only one class of cases, namely where the creditor employs capital and transacts business in the debtor's domicil through an agent there.[7] It seems that for this taxation to be upheld there must be a resident agent.[8] The justification for such a tax appears to be the protection afforded the investments by the taxing state.[9] However this benefit would seem to accrue to the non-resident owner irrespective of the presence or absence of an agent. But whatever the justification, it is of no avail to the taxing power without jurisdiction, for under the ruling in the *State Tax on Foreign Held Bonds Case,*[10] there must be in the state some property to tax. In cases such as the foregoing what is this property? It is obviously not the chose in action,—the creditor's right to be paid, for that adheres to him and is not within the jurisdiction. It would seem that the debtor's obligation to pay is property of the creditor within the jurisdiction, and hence taxable.[11] If this is in fact the property on which the tax is assessed it is difficult to perceive how the presence of an agent can render it any more subject to taxation, or the lack of one take away the taxing power. As to the mere paper evidence of the debt, it alone is not property within the jurisdiction to which the taxing power can attach.[12]

Like other intangible personalty shares of stock are taxable at

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[6] Hunter *v.* Board of Supervisors, *supra;* Kirtland *v.* Hotchkiss, *supra.* In the former case the court said, speaking of this question: "The debt due, of which the notes are the evidence, is property vested in the owner wherever he may reside. This property is the right—the chose in action —is an absolute property therein, and, he is as well entitled to it as he is to tangible property in possession."

[7] Catlin *v.* Hull, 21 Vt. 152; New Orleans *v.* Stempel, 175 U. S. 309; Bristol *v.* Washington County, 177 U. S. 133. Nor is it material that the evidence of the debt is actually outside of the taxing state. Bristol *v.* Washington County, *supra;* Metropolitan Life Ins. Co. *v.* New Orleans, 205 U. S. 395. But in New Orleans *v.* Stempel, *supra,* the decision seems to be based partly upon the fact that the evidences of debt were actually in the taxing state. By a later decision of the United States Supreme Court the debt need be evidenced in no particular manner. Liverpool Ins. Co. *v.* New Orleans' Assessors, 221 U. S. 346.

[8] Goldgart *v.* People, 106 Ill. 25.

[9] See Catlin *v.* Hull, *supra.*

[10] *Supra.*

[11] See Minor on Conflict of Laws, 282; Liverpool Ins. Co. *v.* New Orleans' Assessors, *supra.* In the latter case Mr. Justice Hughes said: "The debt of course is not property in the hands of the debtor; but is an obligation of the debtor, and is of value to the creditor because he may be compelled to pay; and power over the debtor at his domicil is control of the ordinary means of enforcement."

[12] Buck *v.* Beach, 206 U. S. 392.

the domicil of the owner.[13] The state of a corporation may also tax the shares of a non-resident and the corporation required to pay the tax.[14] Nor is such an assessment a defense to a tax upon the shares against the owner by the state of his domicil.[15] This question arose in the late case of *Bellows Falls Power Co.* v. *Commonwealth* (Mass.), 109 N. E. 891. There, the petitioner, a Massachusetts corporation owned stock in a Vermont corporation which stock had been taxed in Vermont against the Vermont corporation. When this stock was assessed against the petitioner in Massachusetts it set up in defense the taxation in Vermont. In accordance with the principle above enunciated, the shares were held properly taxable in Massachusetts. The validity of such taxation

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[13] McKeen *v.* County of Northampton, 49 Pa. St. 519, 88 Am. Dec. 515; Bradley *v.* Bauder, 36 Ohio St. 28.

[14] Mayor, etc., *v.* Baltimore, etc., R. Co., 57 Md. 31; Town of St. Albans *v.* National Car Co., 57 Vt. 66. In the latter case one of the grounds of decision seemed to be that a share-holder was the owner of a proportionate share of the corporate property. This hardly accords with the accepted theory of a share-holder's relation to the corporation. See Cook on Corporations, 7 ed., §§ 11, 12. If the tax is on the shares themselves, the true reason seems to be as stated by the Maryland court in American Coal Co. *v.* County Commissioners, 59 Md. 185: "The appellant is a Maryland corporation deriving its existence, and all its powers and franchises from this state. And such being the case it is settled, that the sovereign power of taxation extends to everything which exists by the authority of the state, or which is introduced by its permission, except where such power is expressly or by necessary implication excluded. The separate shares of the capital stock of the corporation are authorized to be issued by the charter derived from the state, and are subject to its control in respect to the right of taxation, and every person taking such shares, whether resident or non-resident of the state, must take them subject to such state's powér and jurisdiction over them. Hence the state may give the shares of stock, held by individual stock-holders, a special or particular situs for the purposes of taxation, and may provide special modes fot the collection of the tax levied thereon."

A tax against the stock of a non-resident at a fixed rate, when there is no tax on the stock of residents is in conflict with the privileges and immunities clause, Art. IV, Sec. 2, par. 1 of the Federal Constitution. Oliver *v.* Washington Mills, 11 Allen 268. But it has been decided by the United States Supreme Court that mere inequality between the taxation of the stock of non-residents and that of residents does not contravene either the privileges and immunities clause, or the 14th Amendment. Travelers' Ins. Co. *v.* Connecticut, 85 U. S. 364. In that case the state statute required corporations such as the defendant, to return a list of its non-resident stock-holders, with the number and market value of the shares held by each, and pay to the state one and one-half per cent. of the value of such shares. The shares of resident stock-holders were assessed at their market value less the proportionate value of all real estate held by the corporation on which it had already paid a tax. For the reason that no such deduction was allowed non-residents, it was claimed that the statute was in conflict with Art. IV, Sec. 2, par. 1, of the Federal Constitution and the 14th Amendment thereto.

[15] Bradley *v.* Bauder, *supra;* Seward *v.* City of Rising Sun, 79 Ind. 351.

is based upon the sovereignty of the state within its own jurisdiction.[16] It has been termed duplicate taxation.[17] But however unjust, it is not technically double taxation since the two taxes were imposed by different jurisdictions.[18]

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[16] See Bradley *v.* Bauder, *supra.* The court said: "The constitutional power to tax shares of stock, owned by our citizens in corporations located without the state, does not depend on where the capital of the corporation is or is not taxed in the state where the corporation is created. The power is the same whether the capital of the corporation is there taxed or not; otherwise the power of taxation conferred by the constitution would be made to depend upon the operation of laws of a foreign jurisdiction—a proposition that is so obviously ill-founded that the moment it is stated its falsity becomes apparent."

[17] See Judy *v.* Beckwith, 137 Iowa 24, 114 N. W. 565, 15 L. R. A. (N. S.) 142.

[18] Coe *v.* Errol, 116 U. S. 517; Kidd *v.* Alabama, 188 U. S. 730; Judy *v.* Beckwith, *supra.*